IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 75 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANBHAI NARANBHAI MAKWANA - Applicant(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR YOGESH LAKHANI WITH MR PRAVIN GONDALIYA for Applicant(s) : 1,
MR AY KOGJE,APP for Respondent(s) : 1,
MR YATIN SONI for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 25/04/2007

ORAL JUDGMENT

1. This petition has been filed by the original complainant making following substantive prayer at paragraph 4(B):

"B) Allow this Criminal Revision Application by quashing and setting aside the order passed below exh.45 dated 3.1.2006 in Atrocity Sessions case No.10 of 2005 pending before the learned Addl. Sessions Judge, 9th Fast Track Court at Rajkot and thereby direct the Investigating Officer to have further investigation on the aspect stated in application at exh.45."

2. The petitioner is one of the co-accused persons against whom a complaint bearing C.R. No.I-572/2004 came to be filed on 18th October, 2004 before the Pradyumannagar police station alleging commission of offences punishable under Section 409, 406, 420 read with Section 114 of Indian Penal Code. The petitioner was arrested pursuant to the said complaint and while in police custody, according to him, he was severely beaten up resulting into serious injuries. He was produced before the Magistrate on 19th October, 2004 when also according to the petitioner he complained about the ill treatment and torture. The petitioner filed a formal complaint before the police authorities on 25th October, 2004 and stated inter-alia that he was harassed, tortured and severely beaten up only because officers concerned had a particular prejudice and dislike for members belonging to the Schedule Caste.

3. It is the case of the petitioner that on account of injuries received by him, he had to be hospitalised in Government hospital from 19th October, 2004 when he was referred to for

treatment by learned Magistrate and remained there as an indoor patient till 29th October, 2004. He was all through out under the custody of police as an under trial prisoner. He was brought back to jail on 29th October, 2004 after being released from Government hospital and was once against treated in private hospital till 26th November, 2004. Apparently, the police upon completion of investigation into the allegations made by the petitioner filed charge-sheet dated 24th December, 2004.

4. The learned Sessions Judge, Rajkot before whom the said trial commenced, recorded the evidence of the first witness on 17th December, 2005 and by 18th January, 2006, learned Sessions Judge had examined as many as 11 witnesses.

5. In the meantime, the petitioner moved an application dated 3rd January, 2006 before the learned Sessions Judge and requested that the entire case may be reopened and the Court may direct reinvestigation of the allegations made by the petitioner. In support of the said prayer, though the applicant pointed out in his application several omissions of the Investigating Agency before this Court, learned advocate Shri Yogesh Lakhani focused mainly on three aspects of the investigation which according to him require reconsideration. It would therefore, be necessary to take note of

only those averments made by the petitioner in the said application dated 3rd January, 2006. In the application, the petitioner had stated that the Investigating Agency failed to bring on record necessary papers of the medical treatment given to the petitioner by Government hospital as also by the prior Doctors. It is also stated that several other statements have not been recorded which would have led to proper conduct of the trial. This application dated 3rd January, 2006 came to be rejected by the learned Sessions Judge who passed the order on the same date.

6. It may be noted that since this Court took cognizance of this petition and summoned R & P from the learned Sessions Court, there appears to be no further progress in the trial after 18th January, 2006.

7. Having heard learned advocate Shri Yogesh Lakhani for the petitioner, learned APP Shri Kogje for the State and learned advocate Shri Yatin Soni for the original accused, I find that the investigation at-least so far as investigating agency is concerned was over on 24th December, 2004, when charge-sheet in the case came to be filed by the police authorities. The petitioner did not complain about any loopholes in the investigation nor complained about any commission or omission on part of the investigating agency. Though the petitioner

filed series of applications in particular, being applications nos. 35, 39, 42 and 43, upon perusal of such applications, it would be apparent that the petitioner never prayed before the Sessions Judge for ordering of reinvestigation of the allegations made by him. Thus right from 24th December, 2004 till 3rd January, 2006, the petitioner took no active steps before the learned Sessions Judge who was the only competent Court who could have ordered reinvestigation at that stage. Learned advocate Shri Yogesh Lakhani though pointed out that on 29th December, 2005, the petitioner brought to the notice of Chief Minister of the State his grievance in this regard, this is however, neither here nor there. If the petitioner wanted some judicial order of reinvestigation, he had to move the competent Court. Nothing therefore, prevented the petitioner from making such a formal request at an earlier point of time. At this stage, therefore, when as many as 11 witnesses has been examined by the Sessions Court and when the petitioner made no formal request from 24th December, 2004 till 3rd January, 2006 for reinvestigation, it is neither necessary nor appropriate to order reinvestigation which would not only prolong the trial, would also cause prejudice to the accused persons. This however, is not to suggest that the grievances of the petitioner need not be redressed. Even without fresh investigation, it

is not in dispute that it is always open for the learned Sessions Judge to examine any witness at any stage of the proceeding, if so found necessary in the interest of justice.

8. Learned advocate Shri Lakhani for the petitioner submitted that the Investigating Agency did not bring on record orders passed by the Magistrate upon production of the petitioner on 19th October, 2004 before whom the petitioner had complained about his ill treatment. It is submitted that at the first available opportunity, the petitioner had complained about severe beating in police custody and the Magistrate had not only examined physical condition of the petitioner, but prima facie being satisfied about his complaint, had referred the petitioner for treatment to the Government hospital where he remained as an indoor patient right till 29th October, 2004. Second grievance made by learned advocate for the petitioner is that though the petitioner was treated in the Government hospital, for as many as nine days, full medical record has not been brought before the Sessions Court. He submitted that over and above being treated at Government hospital by the Government Doctors, the petitioner was treated also as a follow up treatment by jail Doctors as well as by private Doctors referred to by the jail authorities. It is submitted that all these record ought to have

been brought on record by the prosecution to strengthen the case and to bring on record full facts.

9. Having taken note of the contentions made on behalf of the petitioner, though I find that reinvestigation is not called for in this case for reasons already recorded, I cannot help but observe that it is always open for the learned Sessions Judge to examine any witnesses, even at this stage, if so found necessary and in the interest of justice. If the petitioner files a proper application in this regard bringing to the notice of learned Sessions Judge, necessity of examining the witness in addition to those cited by the prosecution in the charge-sheet, same shall be considered by the learned Judge bearing in mind the observations made here-in-above and if the petitioner makes out such a case, learned Judge may summon such witnesses and record their evidence before the conclusion of the trial.

10. I have expressed no opinion on the nature of allegations and its validity.

11. With these observations and directions, petition is disposed of. Rule made absolute to the above extent.

R & P shall be remitted to the trial Court

urgently.

(Akil Kureshi,J.)

(raghu)